
The Committee on Energy and Commerce

November 2, 2011



MEMORANDUM

To: Members and Staff, Subcommittee on Communications and Technology

From: Majority Committee Staff

Re: Subcommittee Hearing on “H.R. 3035, The Mobile Informational Call Act of 2011”

The Subcommittee will hold a hearing November 4, 2011, at 9:00 a.m. in 2123 Rayburn House Office Building on H.R. 3035, the “Mobile Informational Call Act of 2011,” introduced by Representatives Lee Terry and Ed Towns. One panel of witnesses will testify:

Faith Schwartz
Executive Director
HOPE NOW

Greg Zoeller
Attorney General
State of Indiana

Stephen A. Alterman
President
Cargo Airline Association

Michael Altschul
Senior Vice President and General Counsel
CTIA

Delicia Reynolds Hand
Legislative Director
National Association of Consumer Advocates

Background

Congress passed the Telephone Consumer Protection Act to protect telephone customers from intrusive telephone marketing while balancing those protections against the needs of businesses and non-profits to communicate and inform consumers. At the time, most states had rules restricting telemarketing practices, but Congress found that telemarketers used the interstate telephone system to evade those state-by-state restrictions.

The Act took a three-fold approach to addressing the problem of unwanted telephone calls. First, the Act required the Federal Communications Commission to commence a proceeding on telephone solicitations and telemarketing practices, a proceeding that ultimately

resulted in the Do-Not-Call Registry that has protected Americans from unwanted telephone solicitations for a decade. The Do-Not-Call Registry and prohibition on telephone solicitations would not be amended by the H.R. 3035.

Second, the Act prohibited using a prerecorded or artificial voice message to call residential telephone lines, wireless telephones, or emergency and certain other telephone lines (such as 911 lines). The Federal Communications Commission has carved out several exemptions from that ban with respect to calls to residential telephone lines. Non-profits may use prerecorded voice messages, for example, to call residential landlines but not wireless telephones. Businesses may use such messages if they have an established business relationship with a customer and for commercial purposes so long as they are not telephone solicitations.

Third, the Act prohibited the use of automatic dialing systems to make calls to wireless telephones and emergency and certain other telephone lines (such as 911 lines). Automatic dialers call phone numbers at random. Predictive dialers, by contrast, call only numbers entered into the system, and can be used to expedite calls to existing customers. Congress placed restrictions on automatic dialers because it found that telemarketers had used such systems to automatically dial as many as 1,000 phones per day and to dial sequential blocks of telephone numbers, including emergency numbers and unlisted telephone numbers. One reason to include wireless telephones in this prohibition was that, at the time, most if not all wireless telephone subscribers paid to receive incoming calls.

For each of the prohibitions, Congress provided an exception if the caller had the “prior express consent” of the telephone subscriber to make the call. The Act does not define, however, what constitutes such consent, including whether it must be given in writing or may be received orally, and the Federal Communications Commission has proposed requiring such consent to be explicit and written. The Act also excluded calls from non-profit organizations as well as calls from businesses to customers with whom they have an established business relationship from the definition of “telephone solicitation.”

The Act authorizes telephone subscribers to bring private suits to remedy violations of the Act’s protections. It also authorizes state attorneys general to file suits against persistent violators of the Act. The Act did not preempt state laws that would impose more restrictive intrastate regulations or state laws against telephone solicitations, artificial or prerecorded voice messages, or automatic telephone dialing systems. Courts have been divided, however, in how to construe the state preemption provision in some cases.

In 1991, the year Congress passed the Act, only about 7.5 million Americans subscribed to wireless services, and most who did so paid high per-minute rates to receive calls. This year, the vast majority of Americans have a wireless phone, many American households do not have landlines, and a significant minority relies on a mobile phone as the primary or exclusive telecommunications device. Wireless service plans are also much more varied: some offer unlimited calling, others buckets of minutes, and still others require consumers to purchase a limited number of minutes ahead of time.

The aim of the Mobile Informational Call Act of 2011 is to permit informational calls to mobile devices and further amend the Telephone Consumer Protection Act in light of

developments in the communications marketplace over the last twenty years. For example, supporters argue that current restrictions prevent schools from using an automatic dialing system to deliver snow-day alerts to parents that have wireless phones and banks from sending out fraud alerts or low-balance alerts to customers with wireless phones.

Section-by-Section

Section 1. Short Title.

Section 2. Amends several definitions in the Telephone Consumer Protection Act.

Amends the definition of “automatic telephone dialing system” to exclude equipment that merely stores pre-determined numbers—such as a customer list—and automatically dials numbers on that list. Equipment that generates and dials telephone numbers at random or in sequence is still covered.

Adds a definition of “prior express consent,” a term used but not yet defined in the Telephone Consumer Protection Act, to clarify that a business may obtain consent from its customers at any time in their relationship, orally or in writing, including when a customer provides a telephone number as a means of contact.

Section 3. Amends the Telephone Consumer Protection Act to allow businesses and non-profits to use an automatic telephone dialing system or an artificial or prerecorded voice to deliver informational calls for commercial purposes to wireless telephone customers.

Telephone solicitations, as currently defined by the Telephone Consumer Protection Act, would remain unlawful to wireless customers using automatic telephone dialing systems or using an artificial or prerecorded voice, just as they are for residential landline customers.

Section 4. Amends the Telephone Consumer Protection Act to set federal law as the single standard for businesses and non-profits to make informational calls to all telephone customers. Preserves the authority of states to regulate telemarketing through telephone solicitations.

If you need more information, please call Neil Fried or Nick Degani at 5-2927.